UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	**Civil Action No. 18-CV-5587**
Plaintiff,	**Hon. John Z. Lee**
v.	
	Magistrate Judge Young B. Kim
EQUITYBUILD, INC., et al.,	
Defendants.	

RECEIVER'S COMBINED RESPONSE TO OBJECTIONS TO FEE APPLICATIONS[1]

The institutional lenders' pending objections to the Receiver's third and fourth fee applications are largely recycled objections to the Receivers' first and second fee applications. The Court has already overruled those objections. (Docket Nos. 541, 546-547) They are no more persuasive, nor do they deserve a different treatment the second time around. This Court has already found the following, which is equally applicable now:

- "[T]hat the receiver's efforts have benefitted, and will continue to benefit, the receivership estate." (Ex. 1, October 8, 2019 Tr. 7:5-7)
- "[A]s the Court has previously recognized, there is a significant need for the receiver assets to be managed by a neutral third party until an orderly claims process is concluded." (Ex. 1, October 8, 2019 Tr. 7:2-5)
- That the previous delays in filing did not "provide a sufficient basis to deny compensation to the receiver and his retained professionals." (Ex. 1, October 8, 2019 Tr. 9:1-3)

The Court did so consistent with the law providing that awarding of fees in receiverships "rests in the district judge's discretion, which will not be disturbed unless he has abused it." *SEC v. First Securities Co. of Chicago*, 528 F.2d 449, 451 (7th Cir. 1976) (citation omitted). (*See also*

[1] This combined response addresses the institutional lenders' objections to the third and fourth fee applications. (Docket Nos. 581 & 595)

Ex. 1, October 8, 2019 Tr. 5:22-25) "[T]he court may consider all of the factors involved in a particular receivership in determining an appropriate fee." *Gaskill v. Gordon*, 27 F.3d 248, 253 (7th Cir. 1994) (citations omitted). (*See also* Ex. 1, October 8, 2019 Tr. 6:1-4) As the Seventh Circuit instructed in *Gaskill*, "a benefit to a secured party may take more subtle forms than a bare increase in monetary value. Even though a receiver may not have increased, or prevented a decrease in, the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation." *Gaskill*, 27 F.3d at 253 (quoting *SEC v. Elliott,* 953 F.2d 1560, 1577 (11th Cir. 1992)). (*See also* Ex. 1, October 8, 2019 Tr. 6:5-15) Moreover, "[a]receiver appointed by a court who reasonably and diligently discharges his duties is entitled to be fairly compensated for services rendered and expenses incurred." *SEC v. Byers*, 590 F. Supp. 2d 637, 644 (S.D.N.Y. 2008); *Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934); *SEC v. Elliott*, 953 F.2d 1560, 1577 (11th Cir. 1992). These cases continue to support the granting of the Receiver's fee applications and the overruling of the objections here.

To the extent new arguments are raised, those are equally flawed. To that point, those new arguments – that the Receiver should not be paid until a distribution plan is in place and this Court should hold back 20% of all fees – are conclusory, unsupported by authority, and thereby fall under the weight of their burden to "explain[] what therein is unreasonable or, at least, what would be reasonable under the circumstances. Absent such evidence …, the opposition fails." *FTC v. Capital Acquisitions & Mgmt. Corp.*, 2005 WL 3676529, *4 (N.D. Ill. Aug. 26, 2005) (citation omitted). The lenders have cited no case law and there is nothing in the Appointing Order requiring the Court to hold back fees under the circumstances advanced now by the lenders. Nor have the lenders cited any case law that mandates suspending payment to a receiver while he is conferring a benefit to the Estate. Contrary to these conclusory and unsupported arguments, the

SEC has previously (and continues) to support and approve the Receiver's fee applications. (*See e.g.*, Docket No. 606) "In securities law receiverships, the position of the Securities and Exchange Commission in regard to the awarding of fees will be given great weight." *First Securities Co.*, 528 F.2d at 451 (citing *Fifth Avenue Coach Lines*, 364 F. Supp. at 1222). (*See also* Ex. 1, October 8, 2019 Tr. 6:12-15) Further, this Court has already found that the Receiver's efforts have benefitted the Estate and will continue to benefit the Estate, thus justifying reasonable compensation for the Receiver and his retained professionals. (Ex. 1, 7:2-8)

The remaining (and recycled) arguments can be easily resolved. The lenders continue to advance a tardiness argument and claim prejudice, even when the fee applications at issue here were filed consistent with the Order setting deadlines for these filings. (See Docket No. 568[2]) In any event, this Court has already overruled the objections regarding any tardiness in filing fee applications and found this was not a "sufficient basis to deny compensation to the receiver and his retained professionals." (Ex. 1, October 8, 2019 Tr. 9:1-3)

Separately, there are sufficient funds to make payments to the Receiver and his retained professionals. The amount of cash on hand in the Receiver's Account as of December 20, 2019 was $1,305,507.46. These figures do not include any amounts that the Receiver may recover through claims he is evaluating, investigating, and expecting to bring and do not include funds from the sale of the Naples Property (for which the Receiver filed a motion to approve a private sale (Docket No. 589)). The Receiver expects to close on one property in the first quarter of 2020

[2] The lenders' citation to *In re Castelluci*, 2007 WL 7540955 (9th Cir. B.A.P. 2007) is inapposite. There the debtor's attorney failed to file fee applications during the course of the bankruptcy. *Id.* at 4. Yet the attorney made payments to himself from 2002-2004 and by waiting until 2006 to file his fee application, gave no prior notice to the parties and the court and precluded review of his fees. *Id*. at 1, 5. Contrary to here where although the Receiver was delayed in filing his first two fee applications, the third and fourth fee applications were filed according to modified deadlines approved by the Court. (Docket No. 568)

and from that sale, presently expects approximately $850,000 will be transferred to the Receiver's operating account.[3] Additionally, the Receiver anticipates additional funds of at least $1,459,140.20 (corresponding to amounts paid from the Receiver's account for the benefit of other properties) will be restored to the Receiver's account after the properties that have received the benefit of funds from the Receiver's account have been sold.

The lenders also conveniently ignore and/or understate that a significant amount of the Receiver's work in this period is a direct consequence of their persistent motions, objections, communications, demands, financial reporting requirements, and other issues of their own making and for their benefit. (*See e.g.,* Docket No. 483 ("the filings of the Certain Mortgagees have in fact delayed the case.") By way of example, in February and April 2019, the Receiver moved to approve the public sale of properties (Docket No. 228 & 329) many of which are challenged and have significant costs associated with holding these properties. Those submissions led to a virtual avalanche of objections, pleadings, and hearings before the Magistrate Judge and this Court that held up sales for many months to the substantial detriment of the Receivership Estate.

And much work remains to be done. The Receiver must continue to marshal and oversee management of more than 100 properties many of which have challenges, address and fund critical repairs intended to address health and safety concerns, defend dozens of municipal building code violation cases, plan and implement the orderly marketing and sale of the assets, and administer a claims process, among myriad other critical responsibilities. This work is necessary for the Estate because "as Court has previously recognized, there is a significant need for the receiver assets to

[3] And while the lenders continue to argue the Receiver should disclose the value of each property, the Court rejected this argument. (Docket No. 527, Ex. 1, 4/23/19 Tr. 39:13-15 ("I don't think that, you know, opening the kimono with regard to the value does the receiver or anyone that much service.").

be managed by a neutral third party until an orderly claims process is concluded." (Ex. 1, October 8, 2019 Tr. 7:2-5) In any event, the lenders acknowledge none of these efforts and none of this value to the Receivership Estate.[4]

For the foregoing reasons, the Receiver respectfully requests that the Court exercise its discretion to award the Receiver the amount of fees and expenses described in the third and fourth fee applications, and for such other relief as the Court deems just.

Dated: December 20, 2019

Kevin B. Duff, Receiver

By: /s/ Michael Rachlis

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[4] The lenders' citation to *SEC v. Madison* is misplaced. The *Madison* court did not face priority issues where alleged secured lenders have competing interests, and thereby no issues associated with a Receiver seeking to protect interests of all secured creditors (whether institutional or EBF lenders). Here, the Receiver is working to protect each secured creditor's potential rights to the collateral through the management and orderly disposition of the properties (and with the commensurate escrowing of proceeds), all the while limiting exposure to market fluctuation, carrying costs, and other liabilities.

CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2019 I provided service of the foregoing Receiver's Combined Response to Objections to Fee Applications, via ECF filing to all counsel of record, and via electronic mail to Defendant Jerome Cohen at jerryc@reagan.com.

By: /s/ Michael Rachlis

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,	)	Docket No. 18 C 5587
Plaintiffs,	)	
vs.	)	
EQUITYBUILD, INC., EQUITYBUILD FINANCE, LLC, JEROME H. COHEN, AND SHAUN D. COHEN,	)	Chicago, Illinois
	)	October 8, 2019
Defendants.	)	9:03 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTIONS
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiff:	U.S. SECURITIES & EXCHANGE COMMISSION BY: MR. BENJAMIN J. HANAUER MR. TIMOTHY J. STOCKWELL 175 W. Jackson Blvd., Suite 900 Chicago, Illinois 60604
For the Receiver:	RACHLIS, DUFF, PEEL & KAPLAN, LLC BY: MR. MICHAEL RACHLIS 542 South Dearborn, Suite 900 Chicago, Illinois 60605
For Shatar Group:	CHERNY LAW OFFICES, P.C. BY: MR. WILLIAM D. CHERNY 111 East Jefferson Avenue Naperville, Illinois 60540
For 1839 Fund I:	MR. MICHAEL O. KURTZ 5630 North Ashland Avenue, Apt 1 Chicago, Illinois 60660

APPEARANCES (Cont'd):

For USB AG:	PLUNKETT COONEY, P.C. BY: MR. JAMES M. CROWLEY 221 N. LaSalle Street, Suite 1550 Chicago, Illinois 60601
For Citibank, U.S. Bank, Wilmington Trust, and Fannie Mae:	FOLEY & LARDNER BY: MS. JILL L. NICHOLSON 321 North Clark Street, Suite 2800 Chicago, Illinois 60654
For Midland Loan Svcs.:	AKERMAN, LLP BY: MR. THOMAS B. FULLERTON 71 South Wacker Drive, 46th Floor Chicago, Illinois 60606
For Capital Investors, Capital Partners, 6951 S. Merrill I, LLC, 5001 S. Drexel Blvd. Fund II, LLC:	GARDINER, KOCH & WEISBERG BY: MS. SHANNON V. CONDON 53 W. Jackson Blvd., Suite 950 Chicago, Illinois 60604
For Freddie Mac:	PILGRIM CHRISTAKIS, LLP BY: MS. JENNIFER L. MAJEWSKI 321 North Clark Street, 26th Floor Chicago, Illinois 60654
For BMO Harris:	CHAPMAN & CUTLER BY: MR. JAMES P. SULLIVAN 111 West Monroe Street, Suite 1600 Chicago, Illinois 60603
For Liberty EBCP:	JAFFE, RAITT, HEUER & WEISS BY: MR. JAY L. WELFORD 27777 Franklin Road Southfield, Michigan 48034
Also Present:	MR. KEVIN B. DUFF, Receiver

APPEARANCES (Cont'd):

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PROCEEDINGS RECORDED BY
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THE CLERK: 18 CV 5587, United States Securities and Exchange Commission vs. Equitybuild.

MR. HANAUER: Good morning, your Honor, Ben Hanauer and Tim Stockwell for the SEC.

MR. RACHLIS: Good morning, your Honor, Michael Rachlis on behalf of the receiver and the receivership. With me is Kevin Duff, who's the receiver, as well.

MR. DUFF: Good morning, your Honor.

THE COURT: Good morning.

MR. CHERNY: Bill Cherny on behalf of Shatar Group, LLC.

MR. KURTZ: Michael Kurtz, K-u-r-t-z, on behalf of 1839 Fund I, LLC.

MS. MAJEWSKI: Jennifer Majewski on behalf of Freddie Mac.

MS. CONDON: Shannon Condon on behalf of Capital Investors.

MS. NICHOLSON: Jill Nicholson on behalf of Citibank, U.S. Bank, Wilmington Trust as trustees, as well as Fannie Mae.

MR. CROWLEY: James Crowley on behalf of UBS.

MR. WELFORD: Jay Welford on behalf of Liberty EBCP, LLC.

MR. FULLERTON: Tom Fullerton on behalf of Midland Loan Services.

MR. SULLIVAN: James Sullivan on behalf of BMO Harris Bank.

THE COURT: Good morning, everyone.

So, I issued my ruling with regard to a certain number of objections.

Also pending before the Court are the receiver's first and second interim applications and motions for court approval of payments of fees and expenses of the receiver and of retained professionals. That is Docket No. 411 and 487.

The first interim application covers the period from August 17th, 2018, through September 30th, 2018. The receiver requests $96,681 for the receiver; $273,678.94 for Rachlis, Duff, Adler, Peel & Kaplan; $3,300 for the Kraus Law Firm; $3,465 for BrookWeiner, LLC; $27,635 for Whitley Penn, LLP; and, $8,538.50 for Prometheum.

The second interim application covers the period from October 1, 2018, through December 31st, 2018. In that application, the receiver requests $120,471 for the receiver; $392,385.09 for Rachlis Duff; $21,642.50 for BrookWeiner; $15,979 for Whitley Penn; and, $3,490.84 for Lauren D.W. Tatar.

In securities law receiverships, the awarding of fees rests in the district court's discretion, which will not be disturbed unless he has abused it. SEC vs. First Securities Company of Chicago, 528 F.2d 449, 445. Seventh Circuit, 1976.

The Court may consider all of the factors involved in a particular receivership in determining an appropriate fee. Gaskill vs. Gordon, 27 F.3d 248 at 253. Seventh Circuit, 1994.

In making this determination, courts consider that the benefits provided by a receivership may take more subtle forms than a bare increase in monetary value. That's Gaskill, 27 F.3d at 253. Accordingly, even though a receiver may not have increased or prevented a decrease in the value of the collateral, if a receiver reasonably and diligently discharges his duties, he is entitled to compensation. That, too, is Gaskill v. Gordon. And courts also look to the position of the SEC, which is given great weight in determining whether fees should be awarded. First Securities Company, 528 F.2d at 451.

Certain lenders have filed objections to fee applications. The lenders argue that the fee applications demonstrate that the receivership is insolvent, and that its operating costs far outweigh its capital and the benefit to the interested parties. However, the receiver points to various sources of expected future income, such as the sale of various unencumbered properties, that will more than cover the fees and expenses set forth in the two applications. All in all, the receiver indicates that he expects to hold in excess of $6 million in the receiver's account. That's at ECF No.

527.

Furthermore, as the Court has previously recognized, there is a significant need for the receiver assets to be managed by a neutral party until an orderly claims process is concluded. Thus, the Court finds that the receiver's efforts have benefitted, and will continue to benefit, the receivership estate; and, accordingly, the Court overrules the lenders' objections in this regard.

Furthermore, the lenders contend that the receiver and his retained professionals should not be paid until rents are restored to the lenders, pursuant to the Court's February 13th, 2019, order. That's ECF No. 223.

To be sure, the February 13th order does confer on the receiver an obligation to restore the rents, to the extent there are enough funds now or later, if they have been used for the benefit of other properties. But the receiver has informed the Court that he is in the process of restoring the rents. See, for example, ECF No. 460 and ECF No. 527.

And what is more, the February 13th order does not require that this process be completed before any fees are awarded. Rather, it directs the receiver to restore the rents as possible when the funds to do so are available.

Given that the receiver has already made substantial progress towards restoring the rents, the Court overrules the lenders' objections in this regard, as well.

Additionally, the lenders argue that the receiver's fee applications fail to comply with the SEC's billing instructions, and that the receiver requests compensation for efforts that are unreasonable, duplicative or provide no appreciable value.

The SEC, however, approves of the fee applications and states that they substantially comply with the SEC billing guidelines. See ECF No. 526. And, as previously stated, the Court is to give the SEC's position great weight in a securities law receivership case like this one.

Having reviewed the applications, the Court agrees with the SEC and finds the applications substantially comply with the billing guidelines. Additionally, the Court concludes that the lenders have failed to show the requested fees are unreasonable. And, therefore, those objections are overruled, as well.

Finally, the lenders also point out that, although the receivership order requires the receiver to file quarterly fee applications, the receiver's first interim application was not filed until June, 2019, approximately ten months after he was appointed. The second application was filed in August, 2019. The receiver acknowledges the delay and explains that he was devoting his efforts to other needs of the receivership estate.

The Court recognizes that the applications were not

timely filed. However, it is not persuaded that those delays, in and of themselves, provide a sufficient basis to deny compensation to the receiver and his retained professionals. That said, going forward, the receiver is ordered to file quarterly applications, as required by the receivership order.

In sum, the Court determines that award of fees requested is appropriate, based upon the complexities of the receivership, the quality of the work performed, the benefits to the receivership estate, and the time records presented with the applications. Accordingly, the lenders' objections are overruled and receiver's Motions 411 and 487 are granted.

There's also Jerome Cohen has filed an objection -- that's Document 512 -- to Magistrate Judge Kim's August 27th Report and Recommendation. I just want to let the parties know that I'm overruling that objection. I'll be issuing an order on that shortly.

So, there are a couple of other motions that, I understand, are up or in the process of being briefed or will be briefed as of today: The receivership's motion for Court approval of invoices of claim service vendor and continuing retention of claims vendor; the receivership's motion regarding real estate located at 1102 Bingham, Houston, Texas; and, the receivership's motion for Court approval of sale.

There's also certain lenders' motion to permit bankruptcy cases for receivership entities. That's noticed

for today. That's Document 538.

So, I took a look at the motion. And the claims process or the way by which the receivership will address all the various claims that are made with regard to the properties in the receivership estate has been the subject of far too much litigation in this case already. And I wondered -- my first impression, looking at the motion, was whether this was just another attempt by the lenders to get out from under the claims process that Judge Kim established -- Magistrate Judge Kim established -- and try to find a different venue in which to do that.

Perhaps I'm wrong. Perhaps there are other reasons. And I wondered if the lenders who filed the motion can, perhaps, educate me on what those reasons are.

MS. NICHOLSON: Your Honor, I'd be happy to address this.

THE COURT: Can you state your name again, please.

MS. NICHOLSON: Yes. Jill Nicholson on behalf of Citibank, U.S. bank and Wilmington Trust as trustee, as well as Fannie Mae.

Your Honor, I don't think we're trying to disturb the claims process at this point, because the claims have been filed. They would be docketed as filed in the bankruptcy case. And the -- and, as the debtor in possession, the receiver would have the ability to object to those claims --

as he would in any case -- in this case, as well as in the bankruptcy case.

When you have a Chapter 11 case, you not only have claims that can be filed by the debtor in possession; you also have the opportunity to have objections filed by the Office of the United States Trustee -- a neutral third party, which is an arm of the Department of Justice -- as well as creditors also have an opportunity to object to claims, as well.

So, there's a little more of a -- I don't want to say a robust property. It's more additive than rather than restrictive than the process that's actually here in place.

We're not trying to seek to divest the receiver of his authority in any way, shape or form, or say he can't object to claims. That's within his ability to do so. And, again, the claims have been filed, and he's in the process of doing that.

The reason we filed this is because we know that there are hundreds of investors. There are a number of lenders here. And I can assure the Court, having represented at least four of these lenders here, we have worked very hard and very diligently to file -- as much as we can -- briefs signed by multiple people. We want to be respectful of the Court's time.

So, one of the things that was contemplated is bankruptcy anticipates what's called an adversary proceeding.

I'm sure -- because the bankruptcy court -- you're aware of this -- is an adjunct of your court, your Honor -- that they can handle multiple matters; they have seen these issues; and, they can move them on parallel tracks.

That's not to say this Court isn't capable of doing it either, but it's something that the bankruptcy courts do on a daily basis.

And we have here, you know, quite a bit of a logjam, as the Court has acknowledged. We're a year into the case. The lenders -- I can't speak for all of them; I can speak for my clients -- would like to see a process that is -- has -- you know, again, we see this issue where we're demanding more transparency. We want more information. We feel like we're not getting it. I feel like a lot of times these issues could be resolved if we had more transparency instead of, you know, motions filed without being consulted. We're happy to do that. That's not the issue here.

But having that adversary place in process, having the benefit of a neutral third party, such as the Department of Justice and Patrick Lang -- who is, again, a former AUSA -- having lawyers there to say, look, a gut-check reaction here. We have a neutral third party. If the lenders are out of line, the U.S. Trustee can object to that. If the receiver or the debtor in possession is out of line, the U.S. Trustee can object to that. That is a neutral third party, that this

Court currently doesn't have the benefit of.

So, one of the thinking -- one of -- at least the initial thought was this would be helpful to the Court rather than burdensome.

Other arguments that, you know, we would say is, if you look at the local rules, your Honor, it says that you should incorporate bankruptcy rules, bankruptcy procedures -- this is Rule 66.1 -- and that those are kind of guiding factors. Our position is, well, what better venue to have it in, if these cases are to be informed by bankruptcy. Have those borrowers placed into bankruptcy to adjudicate the priority claims issues, the claims distribution issues. It's a very streamlined process.

Much of the work is, I will acknowledge, already done. But I can anticipate if you have hundreds of investors and you have scores of lenders who are now fighting that different -- that battle, the adversary, distinct proceeding would make much more sense, and would be much more efficient and economical on the whole, you know.

And I won't get into the other issues, your Honor, that I raised in the motion. You know, we have -- there's the benefit of the automatic stay, which, I would argue, is almost -- is broader than what we currently have in this receiver order. And the receiver order contemplates that the receiver could file for bankruptcy, if he so chooses.

So, there are a number of reasons, you know, I think we've articulated in the motion why we think, you know -- it sounds like they want to move the case forward. And we want to move the case forward. And we're equally aligned in that, in trying to find a vehicle that would accomplish that.

And I think the other argument, that maybe we don't have currently in this situation, is bankruptcy judges can decide core matters and issue final orders. Those core orders also include things like lien priority, sales. Things that, unfortunately, Magistrate Judge Kim cannot decide on a final basis. So, there's some inherent efficiency with that, as well.

I anticipate what the receiver and the SEC may say is, well, look, you know, this is going to take work, it's going to take time. But I think the response to that is, typically, a claims agent would have all this information. They've already spent the due diligence. They know what the assets are. They know what the liabilities are. And what this case has been bogged down in, frankly, is administration. And I think moving that venue will help ease that burden.

So, that's my response to your question, your Honor.

THE COURT: Thank you.

MR. HANAUER: Thank you, your Honor.

The SEC opposes that motion. And going to what counsel said about there being a logjam that needs to be

broken, first response: The logjam is of the lenders' making. It's been the lenders who have been objecting to virtually every action the receiver's taken.

But, also, the logjam, it appears, has been broken last week by the Court's order allowing the sale process to go forward. And, hopefully, that will mean that continued liquidation by the receiver can go forward quickly, as well.

As counsel alluded to, going into bankruptcy is highly inefficient. The things that a bankruptcy court would supervise -- the liquidation of properties and the claims process -- that's already ongoing. And that's ongoing under the Court's supervision and Judge Kim's supervision.

There's no need for another neutral party because, oh, by the way, the receiver is a neutral party. The receiver is an agent of the Court and acting on the Court's behalf for the benefit of all creditors.

So, really, the bankruptcy process doesn't give the lenders anything that they aren't getting here except for maybe a new judge who may see things differently from the Court and Judge Kim. But forum shopping, that's not grounds to grant the motion.

And, finally, I would just note that the Court has entrusted the receiver, in his business judgment, with the ability to go into bankruptcy for himself or any of the receivership entities. That's a decision, the SEC believes,

that the receiver should be making in his reasonable business judgment, and he should not be having these lenders -- who have been fighting the receiver at every step of the way -- taking attempts to force the matter into bankruptcy, which would really just bring us back to Square One and slow down a process that's already been bogged down considerably.

MR. RACHLIS: Your Honor, we join in the objection and the reasons that the SEC has articulated, and as well as joining your Honor's reaction to the filing of the motion, as well. I think that the concessions that you heard are well-taken. The process has already been in place. The claims process is in place. The sales process is in place. It's been delayed because of their actions to this point. But, hopefully, that logjam has been broken.

The extent that there would be this additional layer will be highly more costly. It will create additional burdens. And I don't believe it will alleviate any burden on this Court because the sales, ultimately, under the receivership statute, are going to still, ultimately, have to get approved by this Court. Ultimately, this Court will have to approve those sales.

And, ultimately, there's an ability to object and file additional appeals from the bankruptcy court to this court.

So, in that context, we're going to end up in the

same process; but, instead, it would be through an effort to get to a different forum, see what that judge will do, and then have the same type of appeals that you've had to this day.

So, there's nothing efficient that's being stated here, and the concession's important. This process has been set in place. There's a sales process that's been, generally speaking, you know, provided to the Court. We're making every effort to do that. The claims process is definitely far along at this point in time.

So, we do object, as well.

MR. HANAUER: And I'm sorry, your Honor, if I can make one additional point before counsel responds; and, that is, going to the efficiency argument.

If we go into bankruptcy, it's just one more party that needs to be paid administratively; and, that would be the trustee. So, adding to the receiver's fees, it just means more money having to go to administer whatever estates there are, less money for investors, less money for other creditors.

THE COURT: All right.

So, here's what I'd like to do: First of all, I would like to have the SEC and the receiver file a written response to the motion to address all the arguments raised in the motion.

Can do you that in 14 days?

MR. RACHLIS: Unfortunately, no. We have -- there are several matters that -- including a large filing, we have before Judge Kim in this matter involving the claims process -- that is going to be -- that is occupying, essentially, full-time right now, to make sure that that status report is completed. And, then, we have a status hearing before him on the 22nd. And, then, we also have some out-of-towns -- oh, and additional filings at the end of this month. So, that might be a little bit of a problem on our end.

THE COURT: Okay.

Well, let's do this: I will give you 21 days. I want it filed by the 29th.

What time is your status before Judge Kim on the 22nd?

MR. RACHLIS: I believe it's either 10:00 or 11:00 o'clock, your Honor.

THE COURT: And what's going to happen at that?

MR. RACHLIS: It's supposed to be a status on the claims process at this point. There's a status report that's due -- I believe it's on the 15th -- that we are heavily working on right now; and, there will be a further discussion of that before Judge --

THE COURT: Okay.

MR. RACHLIS: 11:00 a.m., your Honor.

THE COURT: I would like to meet with the parties off

the record on October 30th at 10:00 a.m. Okay?

As far as the lenders, it's fine if you all want to be here. If you want to designate one or two people and the rest of you can participate by telephone conference, that's fine, too. I'm going to see if I can attend. You might see me in Judge Kim's courtroom on the 22nd.

But I'd like to get a sense off the record about what all the issues are that are brewing that I haven't seen yet and kind of see what the plan is kind of on a 40,000-foot level going forward. Okay?

And perhaps we can try to -- by having more of an informal session off the record, maybe we can either narrow some of the issues that might come up or prevent them or kind of have more of a free exchange. All right?

As I said, I think that for all the lenders, if you want to participate by telephone conference, that's -- and you want to designate one or two people to be here in person, that's probably the preferred way to go. But it's obviously up to you all. Okay?

Does that timing work for everyone?

MR. RACHLIS: Yes.

THE COURT: 30th at 10:00 a.m.?

MS. NICHOLSON: Your Honor, would you like a reply?

THE COURT: I won't need a reply.

MS. NICHOLSON: Understood. Thank you.

MR. KURTZ: Your Honor, if I may?

If any of the other --

THE COURT: Can you state your name.

MR. KURTZ: Michael Kurtz, K-u-r-t-z.

If any of the other creditors object to the institutional lenders' motions, do we also have leave to file a response to the motion; or, is it just the SEC?

THE COURT: You may, but I want them consolidated.

MR. KURTZ: Thank you.

THE COURT: Okay?

The same time frame.

So, at this point, I'll see you all here on the 30th at 10:00 a.m., or I'll hear you on the phone.

Thank you.

MR. RACHLIS: Thank you.

MR. HANAUER: Thank you, your Honor.

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Joseph Rickhoff October 17, 2019
Official Court Reporter